



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**CONCURRING OPINION IN ADVISORY OPINION 1979-67**

of

**COMMISSIONERS JOHN WARREN McGARRY, JOAN D. AIKENS, and MAX L. FRIEDERSDORF**

We concur with the Commission's unanimous approval in Advisory Opinion 1979-67 but not with the reasoning underlying a qualifying restriction in the opinion contained on page 3, lines 2, 3 and 20 thru 26. In the present request, the Republican National Committee, the Democratic National Committee, and the George Peabody College for teachers of Vanderbilt University state that: "Based upon the anticipated expenses, each participant will be awarded a scholarship in the amount of \$8,000 in addition to a waiver of tuition charges for the 12 hours of graduate credit to be awarded upon successful completion of the program."

Corporations and others will be solicited to provide the necessary scholarship funds. In Commission deliberations, the reasoning supporting the restriction referred to above equated scholarship with compensation. It is our belief that these two terms are not synonymous, and that difference is critical to the validity of that restriction. We maintain that the scholarship is not compensation. Our basis for this conclusion is that the primary purpose of the program is educational rather than political.

The Internal Revenue Code, SS 117, 1 allows for an exclusion from gross income of any amount received as a scholarship or fellowship grant. The Treasury Regulations, § 1.117-3, define scholarship as:

"an amount paid or allowed to, or for the benefit of, a student, whether an undergraduate or a graduate, to aid such individual in pursuing his studies. This term includes the value of contributive services and accommodations...and the amount of tuition, matriculation, and other fees which are furnished or remitted to a student to aid him in pursuing his studies."

§ 1.117-4(c) creates the "primary purpose" standard for the exclusion of a scholarship from gross income. Thus, the Treasury Regulations would consider the amounts received by the interns in this program as scholarships "if the primary purpose of the studies or research is to further the education and training of the recipient in his

individual capacity and the amount provided by the grantor for such purpose does not represent compensation or payment for the services." The Supreme Court, in *Binglar v. Johnson*, 394 U.S.741 (1969) has upheld this:

"[T]he definitions supplied by the Regulation clearly are prima facie proper, comporting as they do with the ordinary understanding of scholarships and fellowships as relatively disinterested, no strings educational grants, with no requirement of any substantial quid pro quo from the recipients." *Id.* at 751.

The primary purpose of the Vanderbilt program is educational. The curriculum is controlled by Vanderbilt University's Peabody College, it contains both academic and clinical prerequisites, and there will be a writing requirement which will be associated with the project. 2/ Once the Commission recognizes the difference between scholarship and compensation, then the Commission may rely on Advisory Opinion 75-100. 3/ That opinion held that a volunteer internship program in a Member's home office would not be a contribution if "the institute's program is conducted in a non-partisan manner and in a manner consistent with accepted accreditation standards generally applicable to institutions of higher education." The standard articulated in Advisory Opinion 75-100 should be the test by which the Commission determines whether or not an intern program is a contribution in-kind. The Vanderbilt program clearly falls within this test. As noted above, the program has a writing requirement, academic credit and twice weekly lectures. Whatever impact the interns may have on the federal election process is at best secondary.

Once the Commission has decided that the political impact of the program is secondary, then it should not impose any restrictions on the source of the funding. Indeed, the Commission may look toward its own regulations for an analogous situation. The Commission's regulations would allow corporate or labor money to fund a non-partisan registration and get-out-the-vote drive sponsored by a civic organization with a history of not endorsing candidates. 11 C.F.R. SS 114.3(d)(4). The Commission has also proposed regulations which would allow corporate or labor funds to sponsor non-partisan debates which are staged by a tax-exempt organization. In the instant case, the Commission should allow corporate or labor money to be donated to the Peabody College, a tax exempt organization, for use in its intern program as long as the "program is conducted in a non-partisan manner and in a manner consistent with accepted accreditation standards generally applicable to institutions of higher education." AO 1975-100. The facts presented in this opinion fall within this guideline, and we would encourage the Peabody College to institute this program. In conclusion, it is ironic that a bona fide wholesome scholarship grant to teachers from all areas of the U.S.A. aimed at greater knowledge of and participation in the electoral process could in any way become illicit or illegal.

February 7, 1980

1/ Although the Commission is not compelled to abide by the above stated regulations, it is interesting to note that the 1979 Amendments to the Federal Election Campaign Act,

93 Stat. 1364 - January 8, 1980, request that "In prescribing such rules, regulations, and forms under this section, the Commission and the Internal Revenue Service shall consult and work together to promulgate rules, regulations, and forms which are mutually consistent." 2 U.S.C. § 438(f).

2/ The scholarship is in no way contingent upon the scholar-participant's type or degree of campaign involvement. 3/ Commissioner Aikens notes that her dissent in AO 1975-100 was based solely upon the Commission's presumption of requiring a university to comply with "accepted accreditation standards."

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